



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/782,089	02/12/2001	James B. Carroll JR.	P/12-816	9721

2352 7590 01/16/2003

OSTROLENK FABER GERB & SOFFEN  
1180 AVENUE OF THE AMERICAS  
NEW YORK, NY 100368403

EXAMINER

ST CYR, DANIEL

ART UNIT PAPER NUMBER

2876

DATE MAILED: 01/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/782,089

Applicant(s)

CARROLL ET AL.

Examiner

Daniel St.Cyr

Art Unit

2876

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. Receipt is acknowledged of the amendment filed 10/4/02.

#### *Claim Rejections - 35 USC § 103*

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1-6, drawn to an apparatus and method claims 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Asaba et al, US Patent no. 6,249,751, in view of Abu-Shumays et al, US Patent No. 4,181,853.

Asaba et al disclose a method of measuring gonio-spectral reflectance factor comprising: a goniospectrophotometer; a the computer is provided with, at least, a function of generating random numbers, a function of controlling a measuring device of the goniospectrophotometer, an arithmetic function, means for storing the angle file, the measuring angle specification file and data to be used as a criterion obtained by measuring a coating plate; a plane 1 represents a plane including a normal line of the coating plate and an incident light; a plane 3 represents a plane of coating plate of specimen; a light from a light source 4 via a point of incidence is received by a receiving light instrument in a plane 2 specified by the tilt angle represented by a viewing angle 6 and an angle of rotation from the plane 3 (see col. 4, line 21 +).

Art Unit: 2876

Asaba et al fail to disclose or fairly suggest a flow cell for providing a sample of the pigment.

Abu-Shumays et al disclose a liquid chromatography system with packed flow cell for improved fluorescence detection comprising: a flow cell 12 is provided for the sample material 46.

In view of Abu-Shumays et al's teachings, it would have been obvious for a person of ordinary skill in the art at the time the invention was made to incorporate a flow cell into the system Asaba et al storing the pigment sample so that a more condense and concentrated sample is provided for optimal component resolution to facilitate color detection. Such modification would enhance the color detection process by providing more effective color matching. Therefore, it would have been an obvious extension as taught by Asaba et al.

***Response to Arguments***

4. Applicant's arguments filed 10/04/02 have been fully considered but they are not persuasive. (see the examiner remarks).

**REMARKS:**

In response to the applicant's argument that the references do not teach the present invention (i.e. do not teach a flow cell to orient the interference effect), the examiner respectfully disagrees. Abu-Shumays teach a flow cell 12. The combination of Asaba et al and Abu-Shumays provides a system having a flow cell to control and orient the interference effect. The applicant's argument is not persuasive. Refer to the rejection above.

***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bromberg, US Patent No. 4,203,670, discloses a system and method of fluorescence polarimeter. Gourley, US Patent NO. 5,793,485, discloses a resonant-cavity apparatus for cytometry or particle analysis.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel St.Cyr whose telephone number is 703-305-2656. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G Lee can be reached on 703-305-3503. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7721 for regular communications and 703-308-7724 for After Final communications.

Application/Control Number: 09/782,089

Page 5

Art Unit: 2876

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

Daniel St.Cyr  
Examiner  
Art Unit 2876

DS  
January 9, 2003

A handwritten signature in black ink, appearing to read 'Daniel St. Cyr', is written over a horizontal line. The signature is stylized with loops and a long horizontal stroke extending to the right.